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701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Christopher J. Harvie

Direct dial 202 434 7377
cjharvie@mintz.com

May 11, 2001

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Inquiry
CS Docket No. 01-7

Reply Comments of Cablevision Systems Corporation

Dear Ms. Salas:

Enclosed please find an original and nine copies of Reply Comments of Cablevision Systems Corporation in the above-referenced docket. Copies of these comments have also been forwarded on diskette to Royce Dickens of the Cable Services Bureau, Federal Communications Commission, and to International Transcription Service, 1231 20th Street, N.W., Washington, DC 20036.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Christopher J. Harvie

Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Nondiscrimination in the Distribution of)	CS Docket No. 01-7
Interactive Television Services Over Cable)	
)	
Notice of Inquiry)	

REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Of Counsel

**Charles Forma
Senior Vice President
Law**

**Lee Schroeder
Vice President
Government and Regulatory Strategy**

**Elizabeth Losinski
Vice President
Cable Policy**

**Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, NY 11714**

**Howard J. Symons
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
(202) 434-7300**

Its Counsel

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
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REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding. Through various affiliates, Cablevision provides cable television and programming, cable modem service, telephony and other offerings to subscribers and customers located principally in New York, New Jersey and Connecticut.

INTRODUCTION AND SUMMARY

The commenters in this proceeding unanimously agree on the nascency of interactive television (ITV) services. Companies that are actively investing and working to bring ITV capabilities and services to market -- such as Cablevision, DIRECTV, Canal+, OpenTV and other ITV platform, technology and content providers participating in this proceeding -- also agree that government regulation of ITV services would be unwarranted, unnecessary and counterproductive. While some commenters, principally broadcast entities, call for prescriptive regulation of ITV services, the record in this proceeding overwhelmingly undercuts their position.

Cablevision has invested billions of dollars simply to put itself in a position to be able to offer its subscribers an array of ITV services. ITV is a nascent service that presents several

unique risks and challenges with respect to provisioning and customer support, which Cablevision detailed in its opening comments. Moreover, the presence of competition from DBS and other prospective ITV platforms and providers further enhances the risks and uncertainties associated with deploying these new services. Under these circumstances, the proponents of ITV regulation should be held to a heavy burden of proof regarding the necessity of government intervention into the evolving ITV marketplace. Commenters favoring regulation, however, have utterly failed to meet this burden.

No commenter to this proceeding has offered specific evidence of any market failure or competitive anomaly in the burgeoning ITV marketplace that warrants government intervention. Arguments in support of regulation are predicated upon speculative concerns about *possible* means by which non-cable ITV providers *might* be disadvantaged. Moreover, their comments disregard the mounting evidence that ITV services will be available from an array of competitive platforms and providers such as DBS and DSL.

The proponents of regulation have assumed little, if any, of the risks associated with bringing ITV services to market and can only summon unfounded speculation and raw conjecture to support the regulatory intervention they seek. By contrast, companies actively committed to investing capital and confronting the risks and challenges associated with deploying ITV services and capabilities have cautioned against regulation, while demonstrating the growing diversity and competitiveness of the still-nascent ITV marketplace. The case for regulatory intervention has not been made in this proceeding, and the Commission should continue to allow market forces to guide the roll-out of ITV services to consumers.

I. THERE IS NO JUSTIFICATION FOR REGULATION OF CABLE-PROVIDED ITV SERVICES.

The record in this proceeding demonstrates both that there is no basis for initiating regulation of cable-provided interactive services, and that regulation actually would slow the development and deployment of interactive television services. A diverse group of ITV content, technology and platform providers -- including the National Football League, Major League Baseball, Canal+, OpenTV, DIRECTV, the Golf Channel, the Weather Channel, Speedvision, Outdoor Life and several cable operators -- urge the Commission to refrain from regulating interactive television services.^{1/} DIRECTV believes that it is not only “premature to consider regulating ITV services at this time,” but also that regulation “poses an unacceptable risk of inadvertently stifling investment and innovation in ITV at a critical juncture in the service’s development.”^{2/} Canal+ believes that regulation is unwarranted, and asks the Commission “to allow market forces, and the interaction and cooperation between industry players, to facilitate the growth” of the ITV services market.^{3/}

The comments submitted in response to the Notice reveal at least five compelling reasons for the Commission to refrain from regulating cable-provided ITV service. First, virtually all commenters agree that interactive television services is a nascent marketplace.^{4/} The nascency of the ITV marketplace strongly militates against imposing regulations on cable-provided

^{1/} Joint Comments of the Golf Channel, Outdoor Life Network, Speedvision Network and the Weather Channel (“Joint Cable Program Network Comments”) at 1-2, 6-9; OpenTV Comments at 1-2; National Football League Comments at 2-3; Reply Comments of the Office of Commissioner of Baseball (filed April 20, 2001) at 2, 8-9.

^{2/} DIRECTV Comments at 3.

^{3/} Canal+ Comments at 3.

^{4/} Association for Maximum Television Service at 3 (“no one can at this time predict how ITV services will develop and be used in the future”); ALTV Comments at 5 (“the business models and various applications of ITV are still in a nascent stage”); Canal+ Comments at 7; TiVo Comments at 2.

interactive services.^{5/} There are no market-tested technical, business, or revenue models for ITV service, and cable operators are only beginning to obtain real-world customer feedback on service offerings and provisioning processes.^{6/} In this risky and uncertain business environment, Cablevision and others that have invested in ITV capabilities and services must have the flexibility to adapt to marketplace conditions and changes in consumer preferences. Any regulations fashioned now would be based upon a speculative prediction of how the market for ITV services might develop, and could thwart the emergence of more productive and beneficial business and technical models.^{7/}

Notwithstanding the nascency of ITV services, some proponents of regulation assume that the public interest would be best served by having the government ensure that the interactive television services market functions just like the Internet.^{8/} At this early juncture in the ITV marketplace, however, there is no basis for concluding that ITV technology and business models can or should replicate the Internet, that consumers would favor such an approach over other possible models, or that it is necessary and desirable to attempt to effectuate that outcome

^{5/} See In the Matter of Applications for Consent to the Transfer of Control of Licenses by Time Warner Inc. and America Online Inc., Transferors, to AOL Time Warner, Inc., Transferee (CS Docket No. 00-30), Statement of Commissioner Michael K. Powell, Concurring and Dissenting, at 3 (cautioning against government intervention based upon “anticipate[d] harms relating to a loose collection of largely hypothetical, not-yet-existent services”).

^{6/} AOL Time Warner Comments at 8; AT&T Comments at 2-3; Joint Cable Program Network Comments at 5.

^{7/} See AOL Time Warner Comments at 8; AT&T Comments at 3-4.

^{8/} NAB Comments at 3-5; Comments of Disney/Viacom, et al. at 7-8. As a threshold matter, the implicit premise underlying this view is that government regulation is responsible for the development and growth of the Internet. The Commission itself, however, has rejected this notion, instead having found that the flourishing of the Internet can be attributable to the absence of regulation. See, e.g., “The FCC and the Unregulation of the Internet,” Federal Communications Commission, Office of Plans and Policy, OPP Working Paper No. 31, July 1999 (“Unregulation of the Internet”) (http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp31.pdf) at 3, 22-24; see also Broadband Today, FCC Cable Services Bureau Staff Report, October 1999.

through government regulation. There are significant differences between the television and the personal computer, between the manner in which content is presented and formatted on TV and the Internet, and between users' experiences and expectations in watching television versus surfing the Internet. Several ITV services have little to do with the Internet, and the experience to date in Europe suggests that viewers there prefer "TV-centric" interactive services over Web-centric ITV offerings.^{9/} Further, some characteristics of Internet usage -- error messages, system crashes, software buggyness and program incompatibilities, sites that trap users -- would actually inhibit ITV growth and development, since they are squarely antithetical to the seamless experience viewers associate with traditional television. The Commission should resist glib exhortations to shoehorn interactive television services into an Internet framework that may not be appropriate and may actually stifle the emergence and widespread acceptance of interactive television services among television viewers.

Second, the proponents of regulation offer no specific evidence to support their allegation that cable operators can or will harm the ability of unaffiliated ITV providers to compete.^{10/} It would make no sense from a business perspective for Cablevision or any other cable operator to shun content and applications from unaffiliated providers that could promote consumer acceptance of ITV. Cablevision has invested billions of dollars in order to be positioned to offer ITV services, and the company is, in fact, actively exploring business arrangements with a variety of applications and content providers -- both affiliated and unaffiliated -- in order to be able to offer subscribers compelling and user-friendly ITV services and features. There are

^{9/} NCTA Comments at 8; Canal+ Comments at 11-12.

^{10/} Cf. Association for Maximum Television Services at 3-5; ALTV Comments at 3, 5-6; NAB Comments at 16-17; Comments of Disney/Viacom, et al. at 11.

strong business incentives for cable operators to enter into business arrangements with any provider, regardless of affiliation, offering compelling content and applications. Indeed, the comments demonstrate that there is ample opportunity for unaffiliated ITV providers both to compete and partner with cable operators furnishing ITV services.^{11/} Accordingly, the Commission should reject calls to take the drastic step of intervening in the ITV services market on the basis of “possible... anticipate[d]...situation[s]” or “potential” conduct.^{12/}

Third, it is clear that there will be multiple distribution platforms for ITV services, thereby vitiating the ability of any single provider or platform to dominate the marketplace. Commenters with experience in the ITV marketplace agree that there is no basis for concluding that cable operators could enjoy unique competitive or technical advantages over other potential ITV distribution rivals and platforms.^{13/} Indeed, OpenTV contends that regulation would likely deter, rather than fuel, investment in competing ITV platforms.^{14/}

DIRECTV notes that there are “no dominant providers of ITV services.”^{15/} Indeed, DBS providers already are competing vigorously in the ITV marketplace both in the United States and Europe.^{16/} Moreover, DSL, digital broadcast, broadband fixed wireless and PC-based delivery mechanisms also represent viable platforms for the distribution of ITV services.^{17/}

^{11/} See e.g., AT&T Comments at 8-10; Joint Cable Program Network Comments at 13-16; .

^{12/} See Association for Maximum Television Services at 3; ALTV Comments at 2-3, 5-6.

^{13/} Canal+ Comments at 14, 21; OpenTV Comments at 10-12.

^{14/} Compare OpenTV Comments at 13 and Disney/Viacom Comments at 10.

^{15/} DIRECTV Comments at 2.

^{16/} See “DBS Wields ITV as Weapon vs. Cable,” Cable World, April 16, 2001 at 30; AT&T Co Comments at 14-19; Canal+ Comments at 2.

^{17/} Joint Cable Program Network Comments at 11-12; AT&T Comments at 19-23; NCTA Comments at 20-24.

Fourth, other commenters in this proceeding have echoed Cablevision's discussion of the unique challenges associated with provisioning ITV services to subscribers.^{18/} As detailed extensively in Cablevision's opening comments,^{19/} there are unique integration and coordination issues arising from the complexity and interdependence of the headend equipment, network infrastructure and signal transport facilities, software, applications and content that must be seamlessly integrated in order to furnish ITV services in their intended manner. Likewise, there are also substantial presentation issues associated with displaying and formatting Web-based content and other graphics and textual data on the television screen.

To impose a prescriptive regulatory regime on the ITV market at this critical stage of early deployment would be wholly counterproductive.^{20/} OpenTV notes that regulation could effectively thwart the emergence of marketplace solutions to some of the ITV provisioning challenges and constraints currently prevalent.^{21/} Likewise, forced relationships between cable operators and ITV providers that are dictated by government regulation rather than through voluntary contractual arrangements would hamper customer support efforts and quality of service initiatives, both of which will be critical to fostering the development and growth of interactive television.^{22/}

A smooth and successful ITV roll-out is inextricably tied to ensuring that customers' early experiences with interactivity are rewarding rather than frustrating, and free of the

^{18/} NCTA Comments at 35; AT&T Comments at 4-5 & n.12; OpenTV Comments at 2-7 (describing OpenTV as a "provider of software and integration services that enable digital interactive television" and detailing various ITV technology product and service offerings); Canal+ Comments at 8-11.

^{19/} Cablevision Comments at 9-15.

^{20/} See e.g., "Vendors Wary of ITV Inquiry," Multichannel News, February 26, 2001; Joint Cable Program Network Comments at 19.

^{21/} OpenTV Comments at 15-16. See also Joint Cable Program Network Comments at 19.

^{22/} Cablevision Comments at 14-15.

complexity and frustration that have been associated with the introduction of new technology, such as the PC and VCR.^{23/} ITV applications that make it difficult for subscribers to return to programs they were watching, or links to Web sites that have not been properly formatted for display on a television screen will prompt consumers to resist, rather than embrace, interactivity. Regulation would thwart the goal of facilitating a smooth and user-friendly ITV roll-out by limiting the ability of cable ITV providers to exercise their best business and technical judgment concerning the services and applications offered over their platforms.

Fifth, the FCC's legal authority to initiate regulation of cable-provided ITV services is, at best, uncertain. As several commenters have noted, there are serious statutory and constitutional impediments to the establishment of a regulatory regime governing the provision of interactive television services over cable operators.^{24/} The absence of a clear lawful basis for regulating cable-provided ITV services underscores the wisdom of refraining from intervening in the marketplace.

^{23/} OpenTV Comments at 10 (noting importance of "designing and implementing new services only when they are simple and not confusing to subscribers").

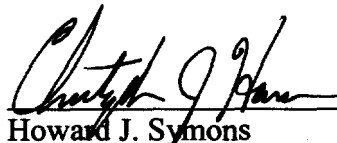
^{24/} NCTA Comments at 39-53; AT&T Comments at 34-39; Charter Comments at 9-13.

CONCLUSION

The record in this proceeding demonstrates that government intervention in the ITV marketplace at this juncture is unnecessary and unjustified. Regulation would likely stifle investment in, and deployment of, ITV services to consumers. Accordingly, the Commission should refrain from regulation and allow market forces to shape the development and growth of interactive television services.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION



Howard J. Symons
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

Charles Forma
Senior Vice President
Law

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Vice President
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Elizabeth Losinski
Vice President
Cable Policy

Its Counsel

Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, NY 11714
(516) 803-2387

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